

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
FAMILY COURT APPEAL No.168 of 2013**

JUDGMENT: (Per Justice R. Subhash Reddy)

This appeal, under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955, is filed by the respondent in F.C.O.P.No.433 of 2011, aggrieved by the order and decree dated 11.12.2013 passed by the Judge, Family Court-cum-Additional Chief Judge, City Civil Court, Secunderabad.

2. The aforesaid F.C.O.P., is filed by the respondent herein, who is the wife of the appellant herein, under Section 25 of the Hindu Marriage Act, 1955 for grant of Rs.10,000/- per month towards maintenance, Rs.10 lakhs towards future expenses and permanent alimony and to order return of 33 tolas of gold, 1 kg. silver and a sum of Rs.5,70,000/-. The Family Court, by the impugned order, allowed the O.P., in part, by awarding a sum of Rs.6 lakhs payable by the appellant to the respondent herein within a period of two months. Out of the said sum of Rs.6 lakhs, a sum of Rs.2 lakhs is awarded towards value of the gold and silver ornaments which were presented at the time of marriage and a sum of Rs.4 lakhs is awarded towards permanent alimony. Aggrieved thereby, this appeal is filed by the appellant-husband.

3. Heard learned counsel for the parties and perused the material on record.

4. In this appeal, it is contended by the learned counsel for the appellant that the Family Court has ordered for payment of a sum of Rs.2 lakhs towards value of the gold and silver articles in the absence of any proof of such articles being given to the appellant. It is further contended that the respondent-wife is working as software engineer and drawing salary of Rs.25,000/- per month; as such, the sum of Rs.4 lakhs ordered to be paid by the Family Court towards permanent alimony is without any basis and thus the impugned order and decree are fit to be set aside.

5. On the other hand, it is contended by the learned counsel for the respondent-wife that, at the time of marriage, 33 tolas of gold, 1 kg. Silver was presented to the appellant herein, apart from furniture and other household articles; as the marriage is already dissolved, respondent is entitled for return of entire value of the aforesaid articles. It is further contended that permanent alimony fixed by the Family Court at Rs.4 lakhs is just and reasonable and no case is made out for interference.

6. In this case, the undisputed facts are that the marriage between the appellant and respondent was solemnised on 22.03.2008 at Viswakarma Sangham,

Secunderabad as per Hindu rites and customs and it was an arranged marriage. The marriage was consummated and both of them lived together for sometime and during their wedlock, they were blessed with a son, who is now living with the appellant herein. The respondent-wife has filed F.C.O.P.No.372 of 2010 seeking divorce, which was allowed and the marriage was dissolved by order and decree dated 18.04.2011, which is marked as Ex.A.2 in F.C.O.P.No.433 of 2011. In the said order, there is no direction for payment of maintenance or permanent alimony; as such, F.C.O.P.No.433 of 2011 is filed by the respondent-wife seeking return of gold, silver and other articles apart from seeking award of permanent alimony.

7. Before the Family Court, the respondent-wife was examined as P.W.1. In her deposition, she has stated that at the time of marriage, the appellant herein was given cash worth Rs.1 lakh apart from 33 tolas of gold and 1 kg. Silver articles towards dowry and the marriage was performed by spending a sum of Rs.2 lakhs. It is also stated that at the time of marriage, she was working as software engineer and her savings of Rs.1,70,000/- were drawn by the appellant herein by using her debit card without her knowledge and the appellant used to take away her salary also. She has also made several allegations on the conduct of the appellant herein, but those are not necessary for disposal of this appeal. In her deposition, she further stated that

the appellant is earning Rs.40,000/- per month by working as software engineer in Magnetic Info, Punjagutta and he owns a house worth Rs.40 lakhs at Yousufguda, Hyderabad apart from some farm land. It is also stated that the appellant is getting rental income of Rs.15,000/- per month besides other income from finance business. P.W.2 is the mother of the respondent herein. She too stated that at the time of marriage, Rs.1 lakh cash was given apart from 33 tolas of gold and 1 kg. silver and also furniture and other articles worth

Rs.1 lakh. She also stated that when the appellant herein was demanding additional dowry, complaint was given to the Police, which was registered as Cr.No.183 of 2009 under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961. R.W.1, i.e., the appellant herein has stated in his deposition that the respondent-wife is more qualified than him and is drawing good salary, as such; she is not entitled to be awarded any amount towards permanent alimony. R.W.2, Smt. J. Maduri, who is the Manger, H.R., of Jarus Technologies (India) Pvt. Ltd., has stated that the respondent herein was working as Senior Software Engineer Grade-II since 19.08.2010 and her gross salary is Rs.4,41,000/- per annum. On behalf of the respondent herein, P.W.4 by name Vijay Narsimha Rao, who was working as Managing Director of Magnetic Infotech Ltd., Hyderabad, was examined. He stated that the appellant herein was working for the last six years and

his salary is about Rs.4 lakhs per annum. The salary certificate is marked as Ex.A.3

8. It is the case of the respondent-wife that at the time of marriage, 33 tolas of gold, 1 kg. silver and other articles were given apart from Rs.1 lakh cash towards dowry to the appellant. However, there is no clear evidence on record to that effect. At the same time, it is to be noticed that parties belong to goldsmith community and there is practice of presentation of gold and silver ornaments to the bride at the time of marriage. In the absence of any clear evidence, we are of view that the sum of Rs.2 lakhs granted by the Family Court towards value of the articles is just and reasonable. Insofar as permanent alimony is concerned, the Family Court granted Rs.4 lakhs.

It is not in dispute that the respondent herein is a graduate and was working as software engineer, earning gross salary of Rs.4,41,000/- per annum. Having regard to income of both the parties, and, further, as the marriage is already dissolved by decree of divorce, which marked as Ex.A.2 and the same has become final, to meet the interests of justice and to put a quietus to the litigation, we deem it appropriate to modify the permanent alimony of Rs.4 lakhs, as granted by the Family Court to Rs.3 lakhs, while confirming the sum of Rs.2 lakhs granted by the Family Court on account of gold and other articles.

9. In the result, the appeal is allowed in part by fixing a

sum of Rs.5 lakhs (Rs.3 lakhs towards permanent alimony and Rs.2 lakhs towards value of articles) to be payable by the appellant to the respondent. As much as a sum of Rs.1.50 lakhs is paid by the appellant to the respondent pursuant to the interim orders of this Court, the appellant shall pay the balance sum of Rs.3.50 lakhs in two instalments of Rs.1.75 lakhs each. The first instalment shall be paid within a period of three months today and the second instalment shall be paid within a period of six months from today. It is made clear that if the appellant fails to pay the aforesaid sum as indicated above, the respondent-wife is entitled to recover the same with interest at the rate of 7.5% p.a., from the expiry of the period stipulated above. No order as to costs.

As a sequel, miscellaneous applications if any pending in the C.M.A., stand closed.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

March 4, 2015
MRR